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PREPARATORY COMMISSION FOR THE
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FOR THE LAW OF THE SEA
New York, 12-30 August 1991

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 1 ON THE PROGRESS OF WORK IN THAT COMMISSION

Programme of work

1. As recommended by its Bureau, Special Commission 1 adopted its programme of work for the current session as follows: (a) the plenary of the Special Commission would consider the working paper prepared by the Secretariat on international commodity agreements or arrangements, and any other matters delegations wished to discuss; (b) the Ad Hoc Working Group of the Special Commission mandated to deal with certain "hard-core" issues would continue its deliberations; and (c) the Chairman's Negotiating Group established by the Special Commission during the ninth session at Kingston would commence its work, concentrating on the provisional conclusions of the deliberations of the Special Commission since its inception.

Meeting schedule

2. During the session, the Special Commission held four meetings. In order to accommodate an additional meeting of the Training Panel, the Special Commission agreed, with a view to facilitating the work of the Preparatory Commission, to let the time allocated to it for one meeting be utilized by the Training Panel. The time for another meeting was fully allocated to the Ad Hoc Working Group and the Contact Group of the Group of 77 on Special Commission 1 Matters.

3. The Ad Hoc Working Group of the Special Commission met three times, sharing meeting time with the Special Commission. The Chairman's Negotiating Group had four meetings. The Bureau of the Special Commission met twice.

I. WORK OF THE PLENARY OF THE SPECIAL COMMISSION

Consideration of working paper on commodity agreements

4. At the request of the Special Commission, the Secretariat prepared, for the current session, a working paper on international commodity agreements or arrangements, contained in document LOS/PCN/SCN.1/WP.14. In relation to the protection of developing countries from adverse effects on their economies or on their exporting earnings resulting from seabed production, the United Nations Convention on the Law of the Sea refers, in article 151 (1), to international commodity agreements or arrangements through which the International Seabed Authority could take measures necessary to promote the growth, efficiency and stability of markets for those commodities produced from the minerals derived from the international seabed area, namely copper, nickel, cobalt and manganese. In studying the problems which would be encountered by developing land-based producer States (DLBPS) likely to be most seriously affected by seabed production, with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, the Special Commission thus wished to examine the issue of international commodity agreements or arrangements (ICAs).

5. Working paper 14 outlines the salient features of ICAs, reviews the current trends and developments and describes briefly the ICAs currently in operation. It is to be noted that with respect to the four mineral commodities of particular interest to the Special Commission, in the case of nickel, there is at present an international commodity arrangement in the form of the International Nickel Study Group; in the case of copper, the terms of reference of the International Copper Study Group were adopted in 1989, but the Study Group is yet to come into operation, pending the fulfilment of the criteria for entry into force of the terms of reference; in the case of manganese, intergovernmental efforts, with the participation of producers and consumers, addressing the world manganese situation are under way and may lead to the consideration of an international study group in the future; cobalt is not covered by any existing ICA.

6. Delegations were invited to deliberate on the issue of ICAs, focusing on whether, and to what extent, ICAs could be helpful to DLBPS in the context of their possible problems resulting from future seabed production, and whether the Special Commission could recommend to the Authority that ICAs in the mineral commodities concerned could be promoted.

7. Some delegations emphasized the need for cooperation and participation of major producers and consumers in order for an ICA to succeed, adding that the main reason of the failure of the Sixth International Tin Agreement was not a lack of finance per se, but rather a lack of participation of some important producers and consumers as well as the political inability to adjust the price range downwards. They drew the attention of the Special Commission to some very difficult negotiating history in the Committee on Commodities of the United Nations Conference on Trade and Development (UNCTAD) on the matter of ICAs and the issues being discussed there, which address the criteria for the

establishment and successful operation of ICAs. In view of those problems, they cautioned against undue optimism in respect of the international community being keen about ICAs.

8. Some delegations noted that although commitments on the part of the international community with regard to ICAs seemed to be undiminished, the practical translation of the commitments in terms of the actual establishment and operation of ICAs had not been achieved. They pointed out that the main difficulties with regard to ICAs arose from the fact that ICAs needed to bring together two diametrically opposed interest groups, namely, producers, interested in higher prices, and consumers, interested in lower prices.

9. Some delegations were of the view that seabed mining would be an entirely new element in the mineral markets, and that it was difficult to foresee what conditions would prevail in the mineral markets with the introduction of seabed mining and what role ICAs could play under those conditions. Those delegations added that in view of the difficulties encountered with respect to ICAs, the future of ICAs remained uncertain, and that DLBPS could not rely on ICAs as effective measures to alleviate their problems.

10. Some delegations agreed that the historical experience demonstrated that the anticipated results from ICAs had not materialized, and that developing countries had been most affected by the failure of ICAs. They added, however, that to avoid disruptions in the market both producers and consumers might be interested in stabilized prices, and that there was some possibility that in the future effective ICAs might come into operation, which was perhaps the spirit behind the reference to ICAs in the Convention. In their opinion, although ICAs were very far from being an effective way of solving commodity problems, it would be useful to keep in view the trends and developments with regard to ICAs in the future, because the situation might improve and good results might be obtained.

11. Some delegations pointed out that there were problems not only in concluding ICAs, but also in bringing ICAs into force and effective operation after they were concluded. They also noted the increasing difficulty of concluding ICAs with economic provisions, the only ones, in their view, which by having a relatively direct impact on markets might be helpful to DLBPS. Other delegations agreed and added that because of a lack of cooperation among major consumers and producers ICAs with economic provisions ran a high risk of failure, and such failure affected developing countries most adversely. Other delegations also agreed, adding that although ICAs with commodity development or market transparency objectives might work they were of relatively less assistance to DLBPS.

12. In the view of some delegations, in spite of all the problems, bearing in mind the imperatives of cost-effective utilization of resources, maximum use of all existing measures including ICAs should be sought.

13. Some delegations provided additional information, mostly of a technical nature, in order that the working paper could be further improved and made

comprehensive. They mentioned that many international commodity study groups such as those on copper, nickel, and lead and zinc, respectively, were autonomous bodies outside the aegis of UNCTAD. They pointed out the role of Food and Agriculture Organization of the United Nations (FAO) in ICAs in agricultural commodities. They mentioned currently existing ICAs or international producer-consumer cooperation, for example on wool. They added that the International Copper Study Group was yet to come into operation since the criteria for entry into force of the terms of reference of the Group had not been met to date.

14. It appeared to the Chairman of the Special Commission that delegations tended to agree in general with the concluding remarks of the working paper to the effect that, bearing in mind the problems and prospects of ICAs, the Special Commission and, in the future, the Authority might benefit most by keeping abreast of the developments with regard to ICAs and in due time making further assessments in the context of their own objectives as to the feasibility and effectiveness of ICAs. With respect to the question as to whether the Authority should encourage the establishment of ICAs in the mineral commodities concerned, there did not seem to be any agreement one way or the other.

Other matters

15. Some delegations raised an issue about the Ad Hoc Working Group and the Chairman's Negotiating Group. In their view those Groups, holding closed meetings in conference rooms with limited facilities, including lack of interpretation, hindered the participation of delegations, and the matters being deliberated in those Groups required the participation of all delegations.

16. In response to the concerns of those delegations, it was recalled that the establishment of the above Groups and the way they would function had come about at the decision of the Special Commission itself. The outcomes of the work of the Groups, it was explained, would be brought to the Special Commission so that all delegations in the plenary would be able to deliberate upon them and take decisions. The Ad Hoc Working Group was open to all delegations, and it held its meetings in conference rooms with full facilities, including interpretation in the six official languages of the General Assembly. It was for the sake of economy in the utilization of the resources of the United Nations that the Special Commission had decided that the Chairman's Negotiating Group would hold meetings without calling for interpretation from the Secretariat. However, it was added, the limited composition of that Group was "without prejudice to any member of the Commission presenting its case", and members of the Commission other than the 13 members of the Group had been attending the meetings of the Group which had commenced functioning during the current session, and had been presenting their cases.

17. Nevertheless, efforts would be made to explore possibilities of sharing meeting time and facilities between the Special Commission and the Negotiating Group during the next session.

II. WORK OF THE AD HOC WORKING GROUP

18. The Ad Hoc Working Group of the Special Commission continued its work under the Chairmanship of Mr. Luis Giotto Preval Paez (Cuba) and made considerable progress in its work. Intensive efforts to resolve one of the three issues entrusted to the Group - criteria for the identification of DLBPS actually or likely to be affected by seabed production - seemed to be leading to successful outcomes. The report of the Chairman of the Group is annexed to the present statement.

III. WORK OF THE NEGOTIATING GROUP

19. During the ninth session of the Preparatory Commission, at the decision of the Special Commission, the Chairman's Negotiating Group was established for the purpose of carrying out negotiations on the provisional conclusions of the deliberations of the Special Commission which can form the basis of its recommendations to the Authority, and of seeking solutions. Various regional groups and interest groups are represented in this Negotiating Group. The members of the Group are: Algeria, Australia, Canada, Chile, China, Cuba, the European Economic Community (EEC), Japan, Philippines, Poland, Uganda, the Union of Soviet Socialist Republics and Zambia, without prejudice to any member of the Commission presenting its case. The Group is chaired by the Chairman of the Special Commission. The Group does not have decision-making power; when solutions are agreed upon, the members of the Group take the solutions to their respective constituent groups - regional groups and interest groups - for consideration, to be considered later in the Special Commission.

20. During the current session, the Chairman's Negotiating Group commenced its work. As mandated, the Group concentrated on the provisional conclusions. It may be recalled that the Chairman of the Special Commission had in that capacity put forward his suggestions on the provisional conclusions in document LOS/PCN/SCN.1/1989/CRP.16, which were later revised in document CRP.16/Rev.1, containing 17 provisional conclusions and two annexes. During the ninth session, two groups of delegations, EEC and its member States and the Group of 77, submitted amendments to the provisional conclusions; they are contained in documents LOS/PCN/SCN.1/1991/CRP.20/Rev.1 and CRP.21, respectively. The work of the Negotiating Group was carried out, as an initial attempt, on the basis of the above three documents, since they address the whole range of provisional conclusions. However, the positions and proposals of other groups of delegations and individual delegations have been expressed in the deliberations of the Special Commission and of the Ad Hoc Working Group during the past sessions. Positions and proposals with regard to certain central issues, if not the whole range of issues, were also presented in various documents: LOS/PCN/SCN.1/WP.8 contains the position and proposals by the Group of Eastern European socialist countries; LOS/PCN/SCN.1/1985/CRP.6 and CRP.17 contain those of Pakistan; and LOS/PCN/SCN.1/1985/CRP.7 contains those of Zimbabwe. All of these positions, proposals and documents were also under consideration in the Negotiating Group.

21. It should be noted that the whole range of provisional conclusions include certain "hard-core" issues which have been entrusted to the Ad Hoc Working Group of the Special Commission. At the outset, it was agreed that the Negotiating Group would defer consideration of those provisional conclusions which are directly linked with the work of the Ad Hoc Working Group, pending the outcomes of the work of the latter group.

22. It was agreed that, as an initial exercise, the Negotiating Group would proceed provisional conclusion by provisional conclusion with a view to (a) identifying areas of agreement, (b) identifying areas of disagreement and, most importantly, (c) in the latter cases, seeking underlying concerns, interests and efforts to accommodate positions of others beneath the apparent surface divergences. It was the hope and commitment of all the members of the Negotiating Group that some compromise solutions could be built upon these underlying understandings. As a logical corollary of this approach, it was agreed that at the time no detailed drafting would be attempted.

23. The Chairman is happy to report that during the current session the above exercise of the Negotiating Group has progressed from provisional conclusion 1 to provisional conclusion 10, and most significantly, the search for finding a basis for solutions is bearing fruit in many instances. It gives him great pleasure to mention the spirit of understanding and cooperation and, above all, the solution-seeking efforts of all the members of the Negotiating Group. He wishes to express his sincerest appreciation to them, and to all the members of the Special Commission for their support of the work of the Negotiating Group.

IV. FUTURE WORK

24. It may be recalled that the Special Commission had identified a wide range of topics which it needed to study in order to fulfil its mandate efficiently. All but one of those topics have been studied in an extensive manner, in most cases, on the basis of working papers prepared by the Secretariat. For the next session the Special Commission, through the Preparatory Commission, would like to request the Secretariat to prepare a working paper on the remaining topic, namely, projection of future supply-demand-price of copper, nickel, cobalt and manganese. In preparing the working paper, the Secretariat should coordinate with the Chairman's Advisory Group on Assumptions of Special Commission 2 with a view to avoiding any duplication of work.

25. During the next session, the Special Commission will study the topic of projection on the basis of the above working paper and will deal with any other matters delegations wish to raise. The Ad Hoc Working Group will continue its deliberations on the issues entrusted to it. The Chairman's Negotiating Group will continue its work on the provisional conclusions.

Annex

REPORT OF THE CHAIRMAN OF THE AD HOC WORKING GROUP OF SPECIAL COMMISSION 1

Consideration of LOS/PCN/SCN.1/1991/CRP.18/Rev.2

1. During the current session, the Group needed almost all of the limited time available to it to try to resolve the issue of the identification of developing land-based producer States (DLBPS) actually or likely to be affected by seabed production. The Group considered the revised suggestions put forward by the Chairman of the Ad Hoc Working Group on this issue in CRP.18/Rev.2.

2. Some delegations stated that they were encouraged by the revised suggestions and expressed their feeling that the resolution of the issue was close. They felt that the figures for dependency thresholds and trigger thresholds specified in CRP.18/Rev.2 were reasonable. They suggested that the term "justify" in paragraph 2 (c) should be replaced by "prove". They also expressed the difficulties raised for them by the "forecasts" mentioned in paragraph 3 (b). They added that the role of the Economic Planning Commission mentioned in paragraph 5 was under discussion in the Chairman's Negotiating Group. In this context, they pointed out that the suggestions being considered in the Working Group and the provisional conclusions under consideration in the Negotiating Group were interrelated.

3. Some delegations felt that the figures for dependency thresholds were still too high. They also felt that the way the matter of categorization was dealt with in paragraph 2 (c) with respect to DLBPS that might encounter special problems was too restrictive.

4. In the view of some delegations, the idea of applying criteria was not in the Convention and any restrictions would be contrary to the provisions of the Convention providing for assistance to DLBPS. They expressed their preference for the Authority to deal with applications from DLBPS on a case-by-case basis. On the other hand, other delegations emphasized that the criteria were necessary; otherwise, the Authority might be burdened with an unduly large number of applications, which could jeopardize its ability to assist DLBPS in an efficient and cost-effective manner. They added that the provision for dealing with DLBPS with special problems on a case-by-case basis, as contained in paragraph 2 (c), could be viewed as a "safeguard" provision which might address the concerns of other delegations.

5. Some delegations expressed the view that since seabed mining would not take place in the foreseeable future, the specification of any concrete criteria would be premature. Without a methodology to isolate the effects of seabed production from those of other factors, concrete criteria could not be established. They also maintained that the objective basis of establishing the criteria should be clearly spelt out.

6. Some delegations questioned the basis on which the figures in CRP.18/Rev.2 had been specified. In their view, the figures were heavily biased by those in the European Economic Community's System for Minerals (SYSMIN). They emphasized that other organizations, including the United Nations and the World Bank, might be able to provide information that could form the basis for different figures.

7. In the assessment of the Chairman, certain modifications might facilitate the acceptance of the suggestions by delegations. To this end, it is his intention to incorporate the following modifications and to present a third revision of CRP.18 at the next session:

(i) Since it appears that the main problem is with regard to the figures, the figures would be viewed as merely indicative. The Authority, in due time, could determine the definitive figures;

(ii) As an indicative figure, only 10 per cent would be mentioned in paragraph 2 (a);

(iii) Paragraph 2 (b) could be deleted, because too many categories are confusing and unnecessary. In any case, the reason these various categories were considered originally was to relate them to DLBPS which are actually or likely to be affected, seriously affected or most seriously affected; such determination would result from the in-depth investigation addressed in the provisional conclusions;

(iv) Paragraph 2 (c) could be redrafted to take into account the concerns of delegations;

(v) Paragraph 3 (b) could be retained to accommodate the cases of DLBPS likely to be affected by seabed production;

(vi) Paragraph 5 could be deleted since there was no strong support from delegations;

(vii) Certain drafting changes could be made in some paragraphs to make them clearer in meaning.

Consideration of LOS/PCN/SCN.1/1991/CRP.19/Rev.2

8. In spite of time constraints, the Group had an opportunity to exchange views with regard to the revised suggestions on assistance measures for DLBPS, contained in CRP.19/Rev.2.

9. Some delegations stated that the revised suggestions were acceptable to them. Some other delegations however expressed the problems they had in accepting the suggestions, emphasizing that many of them ran counter to their basic principles with regard to protection of DLBPS, compensation and the role of the Authority. They also added that most of the matters addressed in CRP.19/Rev.2 were related to the provisional conclusions being dealt with in the Chairman's Negotiating Group.

10. Since the issues dealt with in the Working Group are interrelated with many of the provisional conclusions under consideration in the Chairman's Negotiating Group, it is the feeling of the Chairman of the Working Group that an effective way of integrating the outcomes of the work of the Working Group with that of the Chairman's Negotiating Group needs to be found. Efforts to that end would be made in the next session.

Consideration of LOS/PCN/SCN.1/1989/CRP.15

11. As discussed at the last session, consideration of the issue of the effects of subsidized seabed mining, addressed in CRP.15, would be postponed to the next session pending the outcomes of the Uruguay Round of Negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT).

Future work

12. The Ad Hoc Working Group will continue its deliberations during the next session, with a view to completing its work at that session.

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STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 3 ON THE PROGRESS OF WORK IN THAT COMMISSION

I. Organization of work

1. During the 1991 summer session of the Preparatory Commission, Special Commission 3 held nine meetings, i.e., the 143rd to the 151st meeting.

2. Following the usual practice, the Contact Group of the Group of 77 on Special Commission 3 Matters utilized some of the time allocated to meetings of Special Commission 3 for coordination purposes.

3. At the first meeting of the current session Special Commission 3 commenced its consideration of document LOS/PCN/SCN.3/WP.6/Add.7, part X of the draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area: Accounting Principles and Procedure. To assist the Special Commission in its consideration of the working paper the Secretariat also had prepared a detailed commentary, contained in document LOS/PCN/1991/CRP.12 on the draft articles of the working paper.

4. It had been proposed at the previous session that it would assist consideration of the working paper if a seminar were held at the onset of the current session at which accounting experts from Governments and intergovernmental organizations could address delegates. Since those experts were not available the seminar was cancelled.

5. At the first meeting of the Special Commission during the current session, the Special Representative of the Secretary-General introduced the working paper. He stated that the draft regulations on accounting procedures had been based on procedures used by several of the largest petroleum companies engaged in petroleum production in Africa, Asia and South America,

as well as a model set of rules prepared in 1981 by the United Nations Centre on Transnational Corporations (UNCTC). The draft attempted to balance uniformity with flexibility so that each contractor could establish its own system, subject to approval by the Authority. That would allow their accounting procedures to fit their operations and be consistent with independent auditing and applicable national laws.

6. The Special Representative of the Secretary-General also stated that the draft regulations were consistent with the conclusions of the Centre on Transnational Corporations and with the International Accounting Standards of the International Accounting Committee which had member bodies in over 70 countries. The draft regulations apply both to the Enterprise and to the contractors.

II. ISSUES DEALT WITH IN THE SPECIAL COMMISSION

7. After the introduction by the Special Representative of the Secretary-General, the Special Commission commenced its consideration of the working paper with a general exchange of views in the context of a first formal reading. The Special Commission then entered a second phase of consideration of the paper, meeting as an informal working group of the whole. During this phase extensive comments and proposals were made regarding the purpose, scope and provisions of the draft regulations and, rather than their being repeated here, delegations are referred to documents LOS/PCN/SCN.3/1991/CRP.13 and LOS/PCN/SCN.3/1991/CRP.14, which reflect in detail the views expressed by several delegations.

8. The following suggestions were made in an article-by-article discussion of the working paper.

Article 2. Use of terms

9. The view was expressed that the definition of an "Accounting Manual" contained in the article responded more to the needs of a comprehensive accounting system than to those of the type of reporting system contained in the Convention. Another suggestion was to add a new paragraph 4 which would provide that "for the purposes of this Part, 'significant gain or loss' means any total inventory adjustment exceeding a percentage of the total of physical assets or of inventory before adjustment as shall be agreed upon between the Authority and the contractor, in conformity with generally recognized accounting principles."

Article 137. Scope of this Part

10. It was pointed out that Annex III, article 17 (1) (c) (i) did not define the scope and that it had in fact been defined in Annex III, article 13. Furthermore, those accounting procedures should only apply to contractors who had opted for the mixed system, i.e., a combination of a production charge and a share of net proceeds. Another view expressed was that the scope was

limited only to activities under the contract and should be supplemented by additional wording to include financial transactions relating to expenditures incurred prior to commencement of commercial production and which were directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract.

Article 138. Accounting principles

11. It was pointed out that the draft rules confused accounting regulations and management principles. It was important that accounting principles should be sound; the term "reasonableness of costs" might be acceptable to some but was considered subjective by others and would prove difficult to interpret. The question was raised as to the extent to which the Authority would exercise influence on the management role of the contractor. It was pointed out in that context that it was important not to replace the judgement of miners and contractors with that of civil servants of the Authority. It was therefore proposed that the first paragraph should be deleted and that the article should specify that the accounting should be complete, clear and easy to understand.

12. In support of that argument it was pointed out that the test of reasonableness was not a matter for external bodies. It would be impossible to formulate criteria for reasonableness, and accounting matters were of a factual and not of a subjective nature.

Article 139. Currencies

13. The view was expressed that the article generally reflected current trading practices but as future conditions were unknown it might be better to retain some flexibility as to the choice of currency.

14. It was also proposed that the period in question should be specified so as to avoid gains and losses resulting from transactions. In that regard it was proposed to amend the draft article and to substitute "when payment was made" by "when payment is due" for determining the calculations for gains and losses.

15. On the other hand, it was maintained that the draft regulations were dealing with facts which related to the day "when payment is made" and that the notion of "when the payment is due" should not be introduced in the draft regulations.

Article 140. Accounts and manuals

16. It was proposed to amend the text so that the contractor would not be required to submit the Accounting Manual with other documents. The amendment should further refer to a comprehensive chart of accounts and related account definitions consistent with the Accounting Manual submitted by each contractor for approval by the Authority. It was pointed out that it was important that

the accounts be consistent with non-discriminatory accounting procedures while the harmonization of revenue and the principle of non-discrimination would serve both the interests of the Authority and those of the contractor.

17. Another view expressed was that, although the contractor would be obliged to submit the Accounting Manual for approval within 60 days of the effective date of the contract to the Authority, subsequent articles contained no time-frame within which the Authority should respond. To remedy this omission it was proposed that if the Authority did not state its views on the documents within 60 days of the date of their submission they would be considered approved.

18. Another issue raised was in regard to the keeping of books at each contractor's principal place of business. Views were expressed that the language of the draft article would give rise to varying interpretations and it was suggested that the language be modified to avoid such interpretations.

Article 141. Accounting for materials and supplies

19. Several views were expressed on this article. It was stated that it would not be objective to fix percentages for the price of new and used material and that any references to percentages should be deleted, including the percentages used to define "significant gain or loss".

20. Another view was that the term "costs actually paid" should be changed to "costs actually charged".

21. A question was raised as to the need for categorizing the materials as new, used or that which could not be classified, and it was suggested that the price of the material could exceed its value and that the percentages contained in the draft regulations might prove to be too high. Another view was that the use of the term "if feasible" should be deleted and that rather than requesting "reasonable explanations" only "factual explanations" should be required.

Article 142. Accounting for equipment

22. It was suggested that a distinction should be made between "controllable materials" and "physical assets" and that a definition of "physical assets" might be required to be included in article 2 on the use of terms.

23. Another view was that the period of five years was considered long for the contractor to conduct a physical inventory of capitalized physical assets and that a shorter inventory period would be preferable.

24. A further view was that there was no need for the Authority to be involved in the preparation of a physical inventory since only an accountant was required for its preparation.

Article 143. Personnel costs

25. It was proposed that the term "net" should replace the word "gross" in regard to salaries to better reflect costs to the contractor. Furthermore, references to costs for holiday, vacation, sickness and disability payments should be preceded by the phrase "other costs directly incurred in operations under the contract such as ...".

26. A different view was that the term "gross" should be retained in regard to salaries. It was also pointed out that the percentage of taxation was of no relevance to the Authority.

Article 144. Charges for training programmes for personnel of the Authority and developing States

27. It was suggested that the draft article gave the impression that training would be provided free of charge by the contractor and that the Convention did not provide for such an arrangement. The suggestion was then made that if contractors were to provide any training it should be charged to the Authority.

28. A view was expressed that the article should provide for practical programmes for the training of personnel of the Authority or of developing States. It should also provide for the participation of developing States in all activities in the Area covered by the contract.

29. A further view was that "charges" were not defined in the Convention, which only provided for "principles", and that according to the Convention the contractor was required to include the participation of nationals of neighbouring developing States.

30. Another view was that the obligation to undertake measures to advance the domestic technology of developing countries included providing training opportunities. It was also pointed out that the expenses for such training should be deducted from the share of proceeds attributed to the Authority.

Article 145. Charges for transfer of data to the Authority

31. It was proposed that the draft article should be preceded by a new text establishing the obligation of the contractor to transfer technology. It was also suggested that the article should be amended to apply to all contractors and not just to those who had opted for the mixed system, i.e., the combination of a production charge and a share of net proceeds. The amendment proposed was that "costs for the transfer of technology by the contractor to the Enterprise in respect of the area covered by the contract shall be charged in the event the contractor is requested to acquire from the owner of the technology the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in respect of the area covered by the contract which he is not otherwise legally entitled to transfer."

32. Another view was that the proposed amendment contained problems since the Convention called for the transfer of technology under "fair and reasonable

commercial terms and conditions" and if accepted the proposed amendment would contravene the provisions of the Convention in that regard.

33. On the other hand it was pointed out that this objection to the amendment viewed the transfer of technology from a commercial context. The proposed amendment did not concern itself with commercial exchange; it was only concerned with issues of deductible costs. If such costs were paid, this would be reflected under income and expenditures and not as a charge.

Article 146. Charges for third-party contracts

34. It was proposed to amend the article to reflect that the charges for comparable working services resulted from competitive bidding among potential suppliers. An additional new paragraph was proposed to provide that "the policies followed by the contractor with regard to determining the prices for transactions undertaken with any person, firm or company that, directly or indirectly, controls, is controlled by or is under the common control with a contractor shall be disclosed in the financial reports submitted by the contractor to the Authority".

35. It was pointed out however that the article should be limited to mentioning that third party costs should be charged since it is within the management's responsibility to decide on the actions necessary to ensure optimum revenues for the contractor and thus for the Authority.

Article 147. Charges for affiliates

36. The view was expressed that it was the obligation of each contractor to ensure optimum revenue for itself and to try to make better profits than competitors.

Article 148. Rental payments

37. The view was expressed that the draft article restricted the contractor's discretion with regard to interest to be paid by the contractor for development costs and for operating costs and thus it should be deleted. However, it was also suggested that the draft article be retained since it was possible for profits to be disguised as rental payments to the detriment of the Authority.

Article 149. Insurance costs and losses

38. It was pointed out that the second part of the article presented difficulties and that if losses occurred they should be charged, irrespective of the reason for their occurrence. Furthermore, no judgement of misconduct should be made. It was suggested that a contractor should also be entitled at any time to close down the project, and if he did so he should not be required to pay fees.

39. A different view was that it would seem strange that a contractor engaged in an act with predictable negative consequences would be allowed to profit

from his indiscretions. It was stressed that no person should take advantage of his mistakes or use them as a defence. It was proposed therefore that contractors would have to accept a measure of responsibility, particularly for wilful acts causing environmental damage, and should not be allowed to charge costs for any resulting clean-up.

Article 150. Legal costs

40. It was pointed out that the evaluation of legal costs could not be done by those outside of management and that any reference to "fairness and reasonableness" should be deleted. Furthermore, legal costs occurring prior to the effective date of the contract, but which were directly related to the operation of the contract, should be deductible. It was also stated that there was no need to authorize the Authority to examine the requirement for legal fees and that only the contractor should establish whether or not such a need existed. On the other hand it was pointed out that the text on legal costs should be re-examined since it referred to "fair and reasonable costs".

41. A view was also expressed that there was some merit for charging costs related to the contract if they had been incurred prior to its effective date. However, the discretion to decide as to whether legal costs arose from necessary, as opposed to unrelated, services should not be left to the contractor. It was claimed that if the article were deleted the contractor could charge all legal costs to the Authority.

Article 151. Overhead and administrative costs

42. It was proposed that the draft article be amended to state that overhead costs incurred after the effective date of the contract were to be charged in accordance with a specific percentage to be agreed upon between the Authority and the contractor. It was also proposed that "rates" referred to in the text should be specifically addressed as "agreed upon rates". In addition the term "wilful misconduct" should supplement references to "negligence". However, another view expressed was that the current wording of the draft article did not adequately differentiate between contractors choosing only a production charge and those who had chosen the mixed system. It was also proposed that the reference to "negligence" should be deleted.

43. A further view was that the amendments proposed contained an element of elasticity which would enable appropriate adjustments to be made. The amendments provided room for negotiations between the Authority and the contractor with respect to overhead costs incurred. However, another view was that there was no room for negotiations between the contractor and the Authority in most cases, and particularly in this article the contractor had no room at all for negotiations.

Article 154. Financial reports

44. It was proposed that the article should be clarified to include a text stating that "each quarterly report shall be prepared on a monthly and

aggregate basis and shall be sent to the Authority within 45 days after the end of each quarter. The Authority may make comments and propose adjustments to any report provided that such comments and proposed adjustments are made in writing within six months from the date of submission of a quarterly report". Another proposed amendment was in reference to the annual report, and it was proposed that the Authority "may make comments and propose adjustments provided that such comments and proposed adjustments are made in writing within five years from the date of submission of the report".

45. On the other hand it was pointed out that the draft article could be characterized as falling into the realm of over-regulation and contained excessively onerous provisions. For instance, the necessity of quarterly reports had not been demonstrated and annual reports should suffice. The use of a profit-and-loss statement might seem appropriate but the same did not apply to the statement of cash flow and other provisions. Furthermore, the projected budget statement would also be inappropriate since much of it would be confidential. It was proposed that the provision for five years for comment by the Authority was too long and should be replaced by a provision for one year.

Article 155. Inspection and audit

46. A proposal was made that the text should specify that an annual audit should be undertaken by reputable and independent auditors at the expense of the contractor. The Authority, at its own expense, should be able to designate reputable and independent accountants to conduct additional audits if special circumstances should warrant it. It was also proposed that an extra audit be carried out, at the contractor's cost and at the request of the Authority, if the contractor's reports had been found to be inaccurate or incomplete. Furthermore, the accountants designated by the Authority should have the right to conduct inspections in connection with the contract.

47. A different view expressed was that the audit should be conducted by recognized auditors in accordance with internationally recognized auditing standards.

48. It was pointed out, however, that there was no justification for the right of accountants to conduct inspections and that this provision was excessive in that regard and should be deleted. In the event this right was retained, then all inspections should be limited to those sites directly used by the contractor.

Article 156. Retention of books, records and documents

49. It was proposed that the text should be amended to provide that all books, records and documents shall be maintained for a period commensurate with the useful life of the equipment and material used by the contractor and, in any event, for not less than seven years from the date of issue. However, it was pointed out that this amendment introduced a degree of uncertainty regarding the duration for which books and records must be maintained. It was

stressed that it was important to specify the exact length of the period required.

Article 157. Application of these regulations to the Enterprise

50. It was proposed that the phrase "mutatis mutandis" should be deleted since the Enterprise must conform to the reporting rules for net proceeds without exception. It was also pointed out that the Enterprise would need a comprehensive financial accounting system and its management might wish to choose among existing systems.

51. Following the completion of the consideration of LOS/PCN/SCN.3/WP.6/Add.7 in the informal working group of the whole, the Chairman conducted informal open-ended consultations to ascertain areas of agreement and disagreement on the paper.

52. There was general agreement amongst delegations that it would be necessary to ensure through these regulations that the International Seabed Authority gained the financial benefits to which it was entitled under the relevant provisions of the Law of the Sea Convention. There was less unanimity as to the precise scope and structure of a revised version of LOS/PCN/SCN.3/WP.6/Add.7. Several delegates expressed the view that they were not in a position at the current stage to put forward concrete drafting proposals, as such proposals would require advice from experts from their home capitals.

53. Delegates therefore proposed that the Chairman undertake the task of preparing a revised version of the working paper. He intends to do this after receipt of concrete proposals from all interested delegations and after further consultations and discussions with delegations during the coming session. In this context, certain delegations which have not yet put forward concrete drafting proposals undertook to do so in the period before the spring session in 1992.

III. PROGRAMME OF WORK AT FUTURE SESSIONS

54. During the spring session in 1992 the Special Commission will conclude its consideration of document LOS/PCN/SCN.3/WP.6/Add.7 as quickly as possible. To this end the first week of the coming session will be devoted to intensive consideration of that working paper. The assistance of experts from capitals during the first week would be of utility for all delegates.

55. The Special Commission will then consider two new working papers to be prepared by the Secretariat on inspection and supervision of activities in the Area and on labour matters. Those documents will be circulated to delegations well before the commencement of the spring session so that they may prepare themselves for discussion.

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FOR THE LAW OF THE SEA
New York, 12-30 August 1991

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 2 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. Special Commission 2 held seven meetings at the current session. Two of its scheduled meetings were given over to the first meeting of the Training Panel to enable it to commence its work on the Training Programme. The programme of work for the session was contained in paragraph 35 of LOS/PCN/L.90. As a result of the limited number of meetings, the Special Commission was only able to consider the first item on its programme of work, namely operational options with special reference to the joint venture option as contained in document LOS/PCN/SCN.2/WP.18 and Add.1. The Chairman's Advisory Group on Assumptions met twice during the session, and consultations between the Coordinator of the Contact Group of the Group of 77 on Special Commission 2 Matters and the Coordinator for the Group of Six continued with regard to recommending a single option for the status and structure of the institutional arrangement during the transitional period as contained in the Chairman's paper, LOS/PCN/SCN.2/1990/CRP.5 and Add.2.

Operational options with reference to the joint venture option as contained in document LOS/PCN/SCN.2/WP.18 and Add.1

2. The Special Commission recalled that at its 105th meeting the Special Representative of the Secretary-General for the Law of the Sea had introduced the working papers under reference, pointing out that joint venture arrangements as a method of operation for the Enterprise had been the subject of consideration by the Preparatory Commission at various times since 1983.

3. It was pointed out that in 1971, when the Latin American Group introduced its 13-power draft to deal with the international seabed area, the joint venture option was felt to be the only option for exploration, exploitation

and processing. There seems to be at the current stage general acceptance of the joint venture option as the preferred option for the Enterprise in its initial operations. It is the accepted view that the joint venture option offers clear advantages with respect to the transfer of technology, training of personnel, finance, and processing and marketing.

4. In conducting its work, the Special Commission decided to undertake a section-by-section reading of the two documents, which has helped to focus attention on the joint venture option without detracting from other operational options. It decided further to provide annotations, as appropriate, both to the sections contained in LOS/PCN/SCN.2/WP.18 and to the explanatory memorandum.

5. With regard to the explanatory memorandum in the working paper, the view was expressed that a decision with respect to the joint venture option would depend on how the following points were addressed:

(i) The form the joint venture would take, that is, contractual or incorporated;

(ii) The ratio of capital participation of the joint venture partners. In the case of the Enterprise, it was noted that this would depend on the rate of contributions of countries that had ratified the Convention;

(iii) The need to ensure that the decision-making mechanism within the joint venture recognized the Enterprise's right to have a say in its affairs;

(iv) Transfer of technology (section 8 of the working paper);

(v) Training (section 9);

(vi) The manner in which conflicts would be resolved between the partners (section 21).

6. With regard to the type of joint venture arrangement used as a model in the working paper, i.e., the incorporated rather than the contractual, questions were raised as to why the former model had been chosen when the explanatory memorandum had indicated the advantages of the contractual joint venture. It was noted that the basic intentions of the two parties would be reflected in the provisions of either the contractual or the incorporated joint venture and that the difference would be in the modality of implementation.

7. It was suggested that on the very first page of the model contract, after each party, the words "represented by" should be added since it was usual practice to add a reference to the person who had signed the contract. It was also suggested that the definition of the Enterprise in the first preambular paragraph was restrictive when compared to the definition provided in

annex IV, article 1. It was stated that since the Enterprise not only operated in the Area but also carried out other functions, there was a need to elaborate on the scope of its activities.

8. With respect to section 1, Definitions, the view was expressed that if a definition had been given for the Authority then a definition should be given for the Enterprise. In this connection, it was suggested that the preambular paragraph referred to above should only state what the activity was, and that if a definition was included in section 1 it would need to conform to annex IV, article 1. Another view was that the Enterprise was a moral person of the contract and as a result did not need to be defined. The view was held that there might be a need to define the Participant. Finally, it was stated that it was usual practice to describe the contracting parties and not to define them. It appears, however, to be generally accepted that a definition is not necessary as long as the contracting parties are described within the contract.

9. The definition of applicable law in section 1 and provisions regarding it as contained in section 22 of the model contract resulted in considerable discussions. It was suggested that it would be necessary to de-link section 1.2 from section 22 so that applicable law could be defined as the law to be applied to the contract. It was also agreed to separate sections 22.1 and 22.2 since the former dealt with the applicable law which would govern the contract and the latter with enforcement of the law. Concern was expressed with section 22.2 and the inability of the Enterprise to enforce a decision against a partner who was not a Party to the Convention. It was noted that since there could not be a contract unless the entity, whether public of private, was sponsored by a Party to the Convention, the legal provisions in annex III, article 21 (1), must be built into the contract between the parties. It was also pointed out that it was necessary to distinguish between the substantive and the procedural laws of the country of the contract, and that the applicable substantive laws were those to be applied and implemented when decisions needed to be enforced.

10. With regard to section 2, Scope, it was held that there was a gap in section 2.2. This arose because the working paper addressed itself solely to the assets of the joint venture and did not consider the issue of intellectual property and the ownership of patents which were involved in the transfer of technology in such a high-technology joint venture. It was noted that an essential component of any high-technology joint venture was research and development, and if the Enterprise were to be competitive in the marketplace additional attention should be directed to the matter in the model contract.

11. With regard to section 2.4, it was pointed out that this did not constitute usual practice. Usually, the company was managed by the party which held at least 51 per cent of the shares of the company. Another view was that since the choice of the manager was dependent on the level of competence, sometimes the minor participant could be the manager. The view was expressed that the wording of section 2.4 might make the switch, for the Enterprise to become the manager mandatory. It was suggested further that the

provision be reworded to allow for this flexibility. It was also noted that the provision should provide for the possibility of a third party becoming the manager of the company.

12. Regarding section 3, Term, the view was held that its language could be made clearer. It was pointed out that in the French text the contract would be in effect from the date of its conclusion, while usual practice was to state that the contract would enter into force on the date of signature. It was suggested that the article needed to stipulate that the contract would be terminated in the event of unusual circumstances such as bankruptcy. Another view was that this concern was covered by the provisions of section 17 (c) which dealt with unusual circumstances.

13. In respect of section 4, Responsibilities of the Participant, it was suggested that the list of the Participant's responsibilities was not exhaustive and that the Participant needed to present reports on production and other activities, and to report to the Board of Directors. In this regard, it was noted that while in section 5 (e) provision was made for the Enterprise to cooperate with the Participant in carrying out the training programme there was no corresponding provision in section 4 obliging the Participant to train people for the Enterprise. Similarly, it was noted that while the obligation of the Participant to transfer technology was provided for in section 8, that obligation was not reflected in section 4.

14. Another view was that it was not necessary to add these obligations to section 4. A number of drafting proposals were made. It was suggested that section (a) be redrafted to read as follows:

> "Until the Enterprise assumes such responsibility the Participant shall carry out activities under this contract as manager of the Joint Venture Company in accordance with section 2.4",

and that section 4 (b) be redrafted as follows:

> "The Participant shall thereafter cooperate with the Enterprise so as to facilitate performance by the Enterprise of its responsibilities as the manager of the Joint Venture Company."

It was also suggested that a new section 4 (c) be added to read:

> "The Participant shall provide training for the Enterprise."

15. With respect to section 6, The Joint Venture Company, a number of views were expressed. With regard to section 6.1 the view was put forward that the term "headquarters" in different legal systems could be interpreted in a number of ways. It was suggested that the provision be amended to read "siège sociale" and headquarters. It was pointed out that in English commercial law the term "headquarters" was the principal place of business of the company. Regarding section 6.2, the view was expressed that it was necessary to elucidate all the details on the Articles of Association and the

Memorandum of the Joint Venture Company. The need to specify the currency in which the capital of the Joint Venture Company would be paid was indicated in section 6.3. It was pointed out that since the Joint Venture could be for exploration and/or exploitation and that while the capital input of the two parties might be the same in the beginning, it would be different once exploitation commenced, because the Enterprise's equity would be an explored site. It was also suggested that since WP.18 was only a model contract, this type of specificity was not required.

16. Misgivings were expressed in relation to section 6.6. The point was made that the provision could result in the party providing the loan, mortgaging the collective loan capital of the company and thus hampering its work. It was stated in this connection that since the loan would have to be secured, a mortgage problem would indeed arise.

17. Regarding section 6.7, it was suggested that it would be necessary to specify the minimum number of the members of the Board of Directors and the number that constituted a quorum. The point was made that the section needed to specify how a decision would be taken if the number of votes on either side of an issue were equal, and whether or not the chairman of the Board of Directors would have a casting vote.

18. Regarding section 6.9, it was stated that section 6.9 (b) was ambiguous and that either it should be deleted or it should specify what activities were prohibited. In relation to section 6.10, it was felt that the majority required for substantive issues should be more than a simple majority and that it should be left to the parties to decide on the actual percentages.

19. In the discussions on section 7, Ownership of property, the view was expressed that it was usual practice for the assets of the company to be divided according to the number of shares held by each party. Under this view, upon termination of the contract, debts would first be recovered and the remainder of the assets shared in proportion to the shareholding. Another view was that since the assets would have been fully recovered as development or operating costs, these assets became the property of the Enterprise.

20. With respect to section 8, Availability of technology, the view was expressed that upon termination of the contract the technology should be transferred to the Joint Venture Company.

21. Regarding section 9, Training, it was stated that if the word "staff" referred to the staff of the Enterprise, then the cost of training should not be borne by the Joint Venture Company. On the other hand, if it referred to staff of the Joint Venture Company, then the cost of training should be borne by the company. It was stated that training should not be an obligation and that these matters should be freely negotiated between the Enterprise and the Participant, as equal partners in the joint venture. The attention of the Special Commission was drawn to resolution II, paragraph 12 (a) (ii); article 144 (2) (b); and annex III, article 15, as provisions that made training by the Participant obligatory. It was pointed out that

paragraph 12 (a) (ii) of resolution II was applicable only in the preparatory phase and that when the Convention entered into force and effect it would no longer be applicable.

22. In relation to section 10, Procurement of goods and services, it was suggested that all tenders be internationally advertised, thus avoiding hidden solicitations and inducements by suppliers and contractors.

23. With respect to section 13, Reports, it was pointed out that the problem of ownership had not been properly addressed in the section. It was also pointed out that the question of management should be addressed in section 2, Scope.

24. It was suggested that in section 14, Examination and inspection, and in particular in 14.1, the following words should be added to the text: "... and in accordance with generally recognized accounting principles and procedures".

25. Regarding section 15, Assignment and transfer, the view was expressed that the commentary did not provide that the other party should have the preferential right to purchase the share which the party wished to give up. It was suggested that the provision in 15 (a) needed to be brought in line with section 15 (b) to the effect that no assignment or transfer could take place without the prior consent of the other party in writing. Another view was that the right of first refusal also meant the right of pre-emption, and that it was a preferential right or right of pre-emption. A proposal was made to redraft section 15 (b) to provide clarity. In the proposal, section 15 (b) is to read as follows:

> "[The Enterprise and the Participant shall each] have the right to sell, assign, transfer, convey or otherwise dispose of any of its equity shares in the Joint Venture Company to the other Party or to any third party with the prior consent of the other party, which consent shall not be unreasonably withheld."

26. With regard to section 16, Force majeure, following a debate as to whether to enumerate the conditions which constituted force majeure and whether to include the word "foresee" in section 16.1 before the word prevent, it was decided to maintain section 16.1 as is and return to the question on the second reading of the working paper. It was noted that the wording of the clause was one that was used internationally and might derive from International Chamber of Commerce publication No. 421.

27. The question of whether material breach as contained in section 17.1 (b) should be substituted for by fundamental breach in section 17, Termination, was deferred until the second reading of the working paper. Regarding the question of whether the contract could be terminated in case of force majeure, a proposal was made to add a new subsection (d) to section 17.1, to read as follows:

> "if an event of force majeure has occurred and has lasted uninterrupted for a period of ... months".

28. It was suggested that section 17.2 might need to be improved. It was noted that it provided for termination of the contract, but that under section 17.1 (c) termination was also available in the event of bankruptcy. It was pointed out that the intention of section 17.2 was that where the contract was terminated under section 17.1 it did not have the effect of cancelling those obligations of the parties that had already arisen. It was suggested that section 17.2 should have been written in the negative rather than the positive sense so that the effect of termination does not negate obligations. The observation was made that if a party to the joint venture became bankrupt the reason for its inability to honour its obligations would be bankruptcy and not the termination of the contract. It was proposed that section 17.2 be redrafted to read as follows:

> "Termination of this contract pursuant to this section shall not operate to discharge, terminate or extinguish rights and obligations which have already arisen under the terms of this contract."

29. It was also noted that since the model contract only applies to the relations between the Enterprise and the Participant, the provision in section 17.2 could not be applied to third parties. It was decided that this point would be reflected in an annotation to section 17.

30. With regard to section 18, Waiver, it was noted that the provision sought to preserve the right of the parties if it became necessary to do so. If a party sat on its right then this could not be interpreted as a waiver of its rights. The view was expressed that the provision in section 18.1 was too flexible in that the waiver seemed to be given in perpetuity.

31. The view was expressed that in section 20, Revision, 20.1 and 20.2 should be joined into a single paragraph. Another view was that the provision would become a little cumbersome if the two paragraphs were combined. An observation was made regarding the word inequitable in section 20.1. It was stated that the notion of inequitability was subjective, and that as subjective as it might be, either party might plead inequitability. The view was expressed that inequitability was not a sufficient reason to revise a contract and that a contract should not be revised only because one party had failed to advance in the way it had expected to. It was also suggested that the circumstances mentioned in section 20.1 would have to be extraordinary and unexpected circumstances in order to justify a renegotiation of the contract.

32. In relation to section 21, Disputes, it was suggested that before resort to arbitration it was necessary to resort to the procedures mentioned in Article 33 of the Charter of the United Nations, i.e., negotiation, enquiry, mediation and conciliation. It was requested that the text of section 21 be amended to include this point.

33. With respect to section 22, Applicable law, it was decided that it should be redrafted to reflect the usual practice. It was pointed out that the commentary in WP.18/Add.1 had indicated that section 22 had been based on annex III, article 21 (1). Annex III deals with a special kind of contract,

i.e., the contract between the Authority and the contractor. It was noted that in the working paper one was dealing with a joint venture contract between the Participant and the Enterprise. There would be two contracts, one between the Authority and the Enterprise for a plan of work and the second between the Enterprise and the entity which joined in a joint venture. Since article 21 (1) of annex III does not deal with the same subject-matter, it was felt that following that provision would straitjacket the Enterprise.

Transitional arrangements for the Enterprise

34. During the current session consultations were held between the Coordinator of the Contact Group of the Group of 77 on Special Commission 2 Matters and the Coordinator of the Group of Six with regard to recommending a single option for the status and structure of the institutional arrangement during the transitional period as contained in the Chairman's paper, LOS/PCN/SCN.2/1990/CRP.5 and Add.2.

35. In his report to the plenary of Special Commission 2, the Coordinator of the Group of Six reiterated the importance the Group of Six attached to the establishment of a nucleus Enterprise during the pre-operational stage. He pointed out that although consultations had taken place during the current session there had not been sufficient time to arrive at a compromise single option. He requested that the Special Commission give him and the Coordinator of the Contact Group of the Group of 77 on Special Commission 2 Matters additional time both intersessionally and at the tenth session to continue their dialogue.

36. The Coordinator of the Contact Group of the Group of 77 on Special Commission 2 Matters drew the attention of the Special Commission to an error in CRP.5/Add.2. In option 3 of the paper, he requested that the words "from the Authority" be deleted since they were not part of the Group of 77's position. On the consultations with the Coordinator of the Group of Six on the compromise text regarding a single option for the status and structure of the institutional arrangement during the transitional period, he reiterated the Group of 77's desire to arrive at such a compromise text. He noted, however, that while the Group of 77 had been making concessions, the Group of Six had not been forthcoming with any concessions of their own. He stated the Group of 77's position that a compromise text should remain faithful to the provisions of the Convention.

Assumptions

37. The Chairman's Advisory Group on Assumptions reviewed the current price movements in the four metals (nickel, copper, cobalt and manganese) and continued to study the paper, which compares some of the main parameters of the Australian study and the study done by French experts of IFREMER.

38. On the basis of information presented by the Australian expert and statistics compiled by the Secretariat, the Group observed that there had been minor fluctuations in nickel prices during 1990-1991. According to nickel

industry experts, new production capacities are now coming on stream and this may result in an oversupply of nickel. It is therefore anticipated that nickel prices will remain relatively low in 1991-1992. Copper prices were volatile during 1990-1991. Copper output is expected to increase but consumption is forecast to be lower this year compared to 1990, and this will exert downward pressure on copper prices. The manganese market remains tight and this may encourage new developments. The outlook for manganese is for a continuation of strong demand, and prices are also likely to remain strong. An increase in the demand for cobalt has been predicted for the 1990s. Although supply problems may occur, cobalt prices are forecast to remain firm.

39. The Group examined the paper submitted by the delegation of Australia (LOS/PCN/SCN.2/WP.10 and Add.1) which compares some of the main parameters of the Australian study on the economic viability of deep seabed mining and with those contained in the study done by French experts of IFREMER, under contract to the Commission of the European Communities (CEC). The Australian study was based on the premise that a deep seabed mining project would have an annual production rate of 3 million tons of dry nodules per year while the French study contemplates an annual production rate of 1.5 million tons per year. To enable a more accurate comparison, both sets of figures relating to discounted cash flow rate of return (DCFROR) were derived using the United States Bureau of Mines mine simulation (MINSIM) programme.

40. After an examination of the French study the Group concluded that a project with an annual production capacity of 1.5 million tons of dry nodules might be economically attractive. DCFROR obtained was estimated to be about 10 per cent after taxes and payment to the International Seabed Authority. The primary reason for the positive DCFROR is the higher recovery of manganese (in both qualitative and percentage terms) using pyrometallurgical processing. In the French study, manganese contributes substantially to the project profitability. Other factors used in the French study contribute to making it more favourable than the Australian study. For example, unlike the Australian study, the French study assumes that much of the pre-production activities such as research and development have already been carried out and that their costs are external to the mining project.

41. The members of the Group noted that in order to arrive at a new set of basic assumptions it was necessary to continue to examine new developments related to the technical and economic studies on the viability of deep seabed mining which might be made available to the Group by other pioneer investors.

42. The Group placed on record its appreciation to the experts from Australia and the European Economic Community for their continued assistance in the work of the Group.

Programme of work for the tenth session

43. The programme of work will be as follows:

(a) Harmonization and coordination of activities with respect to exploration and training prior to the entry into force of the Convention and in the period before seabed mining is about to begin;

(b) (i) Other matters arising from paragraph 12 of resolution II, including its subparagraphs (a) (i); (a) (iii); and (b), on which recommendations are needed to fulfil the mandate of Special Commission 2;

(ii) Any residual matters regarding the implementation of the Training Programme under paragraph 12 (a) (ii) of resolution II;

(c) Finalization of recommendations to the plenary of the Preparatory Commission on:

(i) Transitional arrangements for the Enterprise;

(ii) Annotations on the provisions of the Convention on the structure and organization of the Enterprise as contained in document LOS/PCN/SCN.2/L.8;

(d) Operational options:

(i) Joint ventures: annotations to WP.18 and Add.1;

(ii) Operational options seen within the context of the suggestions of the Chairman's Advisory Group on Assumptions.

44. The Special Commission having completed most of the tasks within its mandate is hoping to submit its final recommendations by the summer session of 1992.

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AND FOR THE INTERNATIONAL TRIBUNAL
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New York, 12-30 August 1991

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the resumed ninth session of the Preparatory Commission, the Special Commission had before it the following documents:

(a) LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1-4, Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1, Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany;

(c) LOS/PCN/SCN.4/WP.11, Issues Concerning the Initial Financing and Budget of the International Tribunal for the Law of the Sea;

(d) LOS/PCN/SCN.4/1991/CRP.43, Redraft of Pending Articles of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1);

(e) LOS/PCN/SCN.4/1991/CRP.44, Redraft of article 12 of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1).

2. The Special Commission held a total of seven meetings, starting with the 139th meeting. The Contact Group of the Group of 77 on Special Commission 4 Matters utilized some of the time allocated to meetings of the Special Commission for coordination purposes.

3. At the 139th meeting, the Special Commission decided to consider the items on its agenda in the order listed in the work programme for the summer meetings of the ninth session (document LOS/PCN/L.91 of 21 March 1991, para. 17) subject to availability of documents. In considering its working

methods, the Commission agreed that the Chairman would organize meetings of groups of interested delegations with a view to expediting the attainment of generally acceptable solutions to some issues after first determining which issues might require such consultations. Such meetings would in no way limit the right of delegations to meet on their own initiative in order to formulate any common proposal they might wish to make.

4. Efforts were made to conclude the consideration of articles 14-23 of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1-4), which the Special Commission had been unable to take up at the ninth Session of the Preparatory Commission at Kingston, as well as to conclude its review of the provisions of this Revised Draft Protocol for which the Secretariat had been requested to provide redrafts (LOS/PCN/SCN.4/1991/CRP.43 and 44). A considerable number of the provisions of the Revised Draft Protocol were approved by the Commission, but some of them still require further consultations. The Chairman's summary of the discussion of this draft Protocol will be reflected in document LOS/PCN/SCN.4/L.13/Add.3.

5. The Special Commission, at its 142nd and 143rd meetings, started its review of the Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, prepared by the Secretariat (LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1). The provisions of articles 1-19 of the document, with some exceptions, were approved by the Commission. Owing to a lack of time, consideration of the remaining articles of this draft agreement was postponed. The Chairman's summary of those discussions will be reflected in document LOS/PCN/SCN.4/L.11/Add.2.

6. The Special Commission was also to consider the supplementary relationship arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice. At the invitation of the Special Commission, the Registrar of the International Court of Justice addressed the 145th meeting of the Commission on the issues involved and expressed some preliminary views. The Secretariat has been requested to prepare a working paper on such supplementary arrangements, taking into account the views expressed at the meeting and the response expected from the Court to the request addressed by the Special Representative of the Secretary-General in this connection.

7. In the context of the issue of administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, consultations were conducted between interested delegations on the languages to be used by the Tribunal. As a result of the consultations, progress has been made, but a consensus proposal has not been elaborated. Some interested delegations requested of the Chairman that additional time be given to them for the conclusion of the consultations with a view to reaching a satisfactory agreement.

8. The Chairman of the Special Commission continued his informal consultations on the questions related to the Seat of the Tribunal, with a view to coming to a generally acceptable solution. He consulted with the Chairman of the Contact Group of the Group of 77 and also with a number of interested delegations, including the delegation of Germany.

9. The Chairman reported that views concerning the approach to be taken to the requirements listed in the introductory note to the revision of the official draft Convention (A/CONF.62/L.78) have not been changed since the ninth session of the Commission held at Kingston. These consultations reflected agreement that the Chairman should continue his consultations during the next session with a view to coming to a generally acceptable solution.

10. No additional information was available on the issue of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea, and the Commission did not consider the matter during the summer meetings.

11. Owing to a lack of time, the Commission was unable to consider the rest of the items in its programme of work.

12. The Bureau of the Special Commission has proposed that the following matters be considered at the tenth Session of the Preparatory Commission:

(a) Conclusion of the review of the provisions of:

(i) The Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1);

(ii) The Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.1);

(b) Elements of supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice. The Secretariat has been requested to prepare a working paper for this purpose after it receives the views of the Court;

(c) Consideration of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea; other issues related to the Seat of the Tribunal may be considered in this context;

(d) Initial financing of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.11);

(e) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea; results of consultations on the languages to be used by the Tribunal and on the number of Members of the Tribunal to be available at the Seat of the International Tribunal for the Law of the Sea;

(f) Continuation of informal consultations by the Chairman of Special Commission 4 on the questions related to the Seat of the Tribunal, with a view to coming to a generally acceptable solution;

(g) Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea;

(h) Principles governing a relationship agreement between the International Tribunal for the Law of the Sea and the International Seabed Authority;

(i) Issues relating to the draft report containing recommendations for submission to the Meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the United Nations Convention on the Law of the Sea, regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea:

(i) Form and content of the draft report;

(ii) Other issues.

The above programme of work was approved by the Special Commission at its 145th meeting.

13. The Chairman expressed his gratitude and appreciation to delegations for their continued cooperation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, Dr. Theodore Chalkiopoulos (Greece), Mr. Jorge R. Coquia (Philippines), Mr. Siraj-Eldin H. Yousif (Sudan) and Mr. Fernando Alzate (Colombia) for the helpful guidance and competent advice they had given him also during these summer meetings. The Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, Mr. Satya N. Nandan; as well as to the Secretary of the Special Commission, Mr. Gritakumar E. Chitty, to Mrs. Gertrude Blake and to the other members of the Secretariat for the valuable and competent services they had rendered to the Commission.

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INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
New York, 12-30 August 1991

STATEMENT BY THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During the current session, the plenary dealt with the following matters:

(a) Organization of work;

(b) Preparation of draft agreements, rules, regulations and procedures;

(c) Implementation of resolution II;

(d) The Training Panel.

I. ORGANIZATION OF WORK

2. On 12 August 1991, on the recommendation of the General Committee, the plenary adopted a programme of work for the current session of the Commission which enabled all the special commissions and the plenary on the Authority to meet. The programme was adopted on the understanding that changes would be made as circumstances required.

II. PREPARATION OF DRAFT AGREEMENTS, RULES, REGULATIONS AND PROCEDURES FOR THE AUTHORITY

3. At the first meeting of the plenary on the Authority, held on 13 August 1991, the Chairman outlined the programme of work for the current session. The programme envisaged that the plenary would devote its first two meetings to the second reading of the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority and at the subsequent two meetings, during the second week, it would then resume the examination of the background paper by the Secretariat on administrative arrangements, structure and financial implications of the

International Seabed Authority. The remaining meetings during the second week were allocated to the consultations of the Chairman with the interested delegations on matters related to the establishment of the Finance Committee as well as on the pending articles of the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority and the draft Protocol on the Privileges and Immunities of the International Seabed Authority.

4. In accordance with the above programme of work, the plenary commenced its work with the examination of the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority and completed its second reading. In considering the draft agreement the plenary had before it a revised text of the relationship agreement (LOS/PCN/WP.50/Rev.1) and a working paper prepared by the Secretariat on the sources of those provisions (LOS/PCN/1991/CRP.46).

5. In the second reading the plenary provisionally approved without amendments the third paragraph of the preamble and articles 1; 2; 3, paragraph 1; 4, paragraph 2; 5; 6; 8, paragraph 3; 9, paragraph 2;10, paragraphs 1 and 4; and 19-22.

6. The plenary also adopted as orally amended the first and second paragraphs of the preamble and articles 3, paragraph 2; 8, paragraph 2; 9, paragraph 1; and 12.

7. In approving article 19 on the possible use by the Authority of the United Nations laissez-passer, the plenary took note of the reservations expressed in this regard by the delegation of Japan.

8. The question as to whether reports on the activities of the Authority should be transmitted to the United Nations (article 10, paragraph 3) was the subject of much discussion. It was decided that the Secretariat should study further, in the light of the various opinions expressed during the debate, whether the paragraph should be retained in the text of the draft Agreement.

9. The plenary decided that articles 13 (Relations with specialized agencies and other related organizations), 14 (Administrative cooperation) and 15 (Regional branches, centres and offices) should be deleted from the text of the relationship agreement.

10. The plenary could not reach agreement on articles 4, paragraph 1; 7; 8, paragraph 1; 10, paragraph 2; 11; and 16-18. In order to resolve the remaining difficulties with those articles, the Chairman would consult with interested delegations and then would bring the results to the plenary for its approval.

11. As far as articles 16 (Personnel arrangements), 17 (Budgetary and financial matters) and 18 (Financing of special services) are concerned, it was understood that finalization of their texts would depend on the discussions held with regard to working paper 51.

12. The plenary devoted one meeting to the consideration of the paper on administrative arrangements, structure and financial implications of the International Seabed Authority (LOS/PCN/WP.51). Further discussion of the paper was continued during the session at the level of consultations.

13. In examining the working paper the plenary focused its attention on the the following subjects: guidelines (para. 7); presumed stages of activities of the Authority (para. 9); functions of the Authority during the initial period (para. 14); the so-called "springboard" approach (para. 16); the question of staffing requirements of the Authority (para. 29); and conference-servicing requirements and expenses (para. 52).

14. On the issue of guidelines, the plenary agreed that the structure of the Authority should ensure efficiency and cost-effectiveness and that the Authority should be no larger or smaller than required in order to guarantee the adequate performance by the Authority of its functions at a particular stage of its activities.

15. With reference to the presumed three stages of activities of the Authority referred to in paragraph 9 of working paper 51, the plenary concluded that such an approach should not be interpreted as being detrimental to the institutional structure of the Authority.

16. Having studied the issue of functions of the Authority in the initial period, the plenary agreed that the list of such functions referred to in paragraph 14 of working paper 51 should be further developed in the light of discussions and in particular should be supplemented by the provisions on monitoring the activities of former pioneer investors and on the protection of the environment. The Secretariat was asked to prepare a paper outlining the activities to be performed by the Authority under various functions.

17. With respect to paragraph 16 carrying the rubric "'springboard' approach", it was agreed that the term should be deleted and replaced by the term "evolutionary approach" which better conveys the idea of the gradual development of the activities of the Authority. The plenary reached an understanding that as the activities of the Authority develop every effort should be made to ensure that those activities are carried out in the most effective and cost-efficient manner, while at the same time preserving the institutional structure of the Authority.

18. With regard to the question of professional staff needed by the Authority during the initial period, the plenary concluded that the nature and level of such staff depended on the activities to be performed by the Authority. Therefore, it was decided that the consideration of the question should be postponed until the Secretariat prepared the list of activities of the Authority under various functions (see para. 16 above).

19. In connection with the consideration of the issue of the conference-servicing requirements and costs, the Chairman pointed out that the figures referred to in paragraph 52 of working paper 51 should only be viewed

as an assumption, while at the same time it should be understood that longer and more frequent meetings would involve additional costs. In summarizing the discussion on the issue, the Chairman stated that when any decision on conference-servicing requirements and expenses was being made the following three guidelines should be borne in mind: the provisions of the United Nations Convention on the Law of the Sea should be observed; every effort should be made to make any future arrangements cost-effective to the maximum extent possible; the meetings of the organs of the Authority should be scheduled as regularly as possible to implement effectively the functions assigned to the Authority.

20. The matters related to the Finance Committee were discussed by the plenary at the level of consultations.

21. As decided at the last session, the Secretariat had prepared a revised working paper on the Finance Committee (LOS/PCN/WP.45/Rev.1), reflecting what had been accomplished on this matter in the course of the previous discussions.

22. Consultations confirmed that most of the participants preferred the Finance Committee to be established as a subsidiary organ of both the Assembly and the Council.

23. With regard to the composition of the Finance Committee, it was understood that although the Preparatory Commission would recommend that the Finance Committee be composed of 15 members, the Authority would of course be free to decide otherwise or to change that number at any given time in the future.

24. After quite a lengthy debate on the criteria to be taken into account in the election of the members of the Finance Committee, the Chairman summarized the discussion by saying that there was a general agreement on the first two criteria mentioned in paragraph 2 of working paper 45/Rev.1, and that there appeared to be a need for further discussion with regard to the third criterion relating to the representation of States Parties with the highest contribution to the administrative budget of the Authority.

25. On the question of the programme of work of the plenary on the Authority, it was decided that at the session in Kingston the Chairman would undertake consultations on the pending articles of the relationship agreement with a view to finalizing their text and bringing it to the plenary for approval. The plenary would continue its consideration of the matters related to the administrative arrangements, structure and financial implications of the International Seabed Authority. The plenary would also discuss the pending articles 1 (f) and 21 of the draft Protocol on the Privileges and Immunities of the International Seabed Authority as well as article 55 of the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the Seabed Authority. The Chairman would continue at the session in Kingston his consultations on the Finance Committee and the so-called "hard-core" issues. In accordance with resolution I of the Third United Nations Conference on the Law of the Sea, the

Secretariat will prepare guidelines for the drafting of financial regulations for consideration at the next session.

III. IMPLEMENTATION OF RESOLUTION II

26. In accordance with the decision of the Preparatory Commission, the Group of Technical Experts met from 1 to 5 July 1991 at United Nations Headquarters to consider the application submitted by the Governments of the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization (IOM) as a pioneer investor under resolution II of the Third United Nations Conference on the Law of the Sea.

27. The General Committee noted that, in accordance with paragraph 4 of the statement of understanding of 5 September 1986 (LOS/PCN/L.41/Rev.1, annex), the Group of Technical Experts had determined that the application of the Governments of the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization as a pioneer investor was in confirmity with resolution II of the Third United Nations Conference on the Law of the Sea, in particular with the principle of equal estimated commercial value, subject to the guidelines and procedures set forth in the above-mentioned statement of understanding.

28. It was noted that in accordance with paragraph 21 of the statement of understanding of 5 September 1986 (LOS/PCN/L.41/Rev.1, annex) "a group of all or several socialist States of Eastern Europe, or a group of State enterprises of such States, shall have the right to apply as pioneer investors in accordance with resolution II for one pioneer area until the United Nations Convention on the Law of the Sea enters into force". The following States - Bulgaria, Byelorussian SSR, Czechoslovakia, German Democratic Republic,* Hungary, Poland, Ukrainian SSR and the USSR - were identified as falling within this category (LOS/PCN/L.41/Rev.1, annex, note a, p. 13). Cuba, which was one of the States submitting the application, was not included in the list. The General Committee decided to recommend to the Preparatory Commission that Cuba be deemed to be included in the list of above-mentioned States.

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* Through accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State. As from the date of unification, the Federal Republic of Germany acts in the United Nations under the designation of "Germany".

29. The General Committee, having considered the application of the Governments of the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization as a pioneer investor under resolution II of the Third United Nations Conference on the Law of the Sea, taking into account the report submitted by the Group of Technical Experts, noted with appreciation the conclusions reached by the Group of Technical Experts:

(a) Having examined the technical particulars submitted by the applicant which are summarized in section I of its report (LOS/PCN/BUR/R.8), the Group concluded that the application had been submitted in accordance with resolution II and the understanding contained in document LOS/PCN/L.41/Rev.1, annex;

(b) Having evaluated the technical data and information submitted by the applicant as referred to in section II of its report (LOS/PCN/BUR/R.8), the Group determined that areas A and B are of equal estimated commercial value;

(c) As regards the designation of the reserved area and the allocation of the pioneer area, the Group agreed to recommend for the consideration of the General Committee:

(i) That area A should be designated as the area to be reserved for the Authority;

(ii) That area B, which included an area of 52,300 square kilometres identified by the applicant, should be designated as the pioneer area to be allocated to the applicant.

30. The General Committee met on 21 August 1991 to consider the application of the Governments of the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization as a pioneer investor under resolution II of the Third United Nations Conference on the Law of the Sea, in the light of the report of the Group of Technical Experts. Having considered the application, the General Committee decided:

(a) To designate area A as the part of the application area which was to be reserved for the conduct of activities by the Authority in the Area through the Enterprise or in association with developing States;

(b) To allocate area B, which included an area of 52,300 square kilometres identified by the applicant, as a pioneer area to the applicant, the Interoceanmetal Joint Organization.

31. At its 63rd meeting the Preparatory Commission, as the General Committee had requested, decided to include Cuba in the list of States having the right to apply as pioneer investors in accordance with resolution II for one pioneer

area until the United Nations Convention on the Law of the Sea enters into force (see para. 28 above).

32. The Chairman of the Preparatory Commission continued his informal consultations on the implementation of the obligation of the registered pioneer investor, the China Ocean Mineral Resources Research and Development Association (COMRA). Although the consultations on the implementation of the obligations of the registered pioneer investor (COMRA) had been completed, it became apparent that more time would be needed to enable the General Committee to adopt the understanding, inasmuch as the matter of similar treatment for future applicants was still pending.

33. The Chairman informed the General Committee that it was his intention to convene meetings of the General Committee to monitor the implementation of the obligations of the registered pioneer investors.

IV. THE TRAINING PANEL

34. The Training Panel met on 19, 20 and 21 August 1991 at United Nations Headquarters and held four meetings on the training schedule. At its first meeting, the Panel adopted its agenda and elected Mr. Baidy Diene (Senegal) as its Coordinator.

35. The Panel was of the opinion that the traineeships should cover the priority disciplines set forth in LOS/PCN/BUR/R.6 that identified five engineering disciplines (chemical/metallurgical, electrical, electronic mechanical and mining) as well as marine geology, marine geophysics and marine ecology.

36. The report of the first meeting of the Training Panel to the General Committee is contained in LOS/PCN/BUR/R.9. The decision of the General Committee on matters relating to the Training Panel is annexed to the present statement.

37. At the 63rd meeting of the Preparatory Commission, Mr. Lennox Ballah in his capacity as Chairman of Special Commission 2, was appointed an ex-officio member of the Training Panel.

V. TENTH SESSION OF THE PREPARATORY COMMISSION

38. In accordance with the decision taken by the Preparatory Commission which stated that "the duration of a given meeting be established at the preceding meeting (LOS/PCN/L.92, para. 36)", the Preparatory Commission decided to hold its tenth session at Kingston for a three-week period from 24 February-13 March 1992. This does not preclude the holding of the usual four-week session at Kingston in spring 1993 if the Preparatory Commission so decides. It was also decided that the Training Panel will meet simultaneously with the meeting of the Preparatory Commission.

Annex

DECISION ADOPTED ON 29 AUGUST 1991 BY THE GENERAL COMMITTEE ON MATTERS RELATING TO THE TRAINING PANEL

1. The Training Panel will meet simultaneously with the meeting of the Preparatory Commission which will be held at Kingston from 24 February to 13 March 1992.

2. The Panel will be provided with the training programmes which will be resubmitted by Japan and the Union of Soviet Socialist Republics, and the training programme to be submitted by India, for its consideration.

3. The Preparatory Commission requests that the pioneer investors India, Japan and the USSR make all efforts to present their programmes during the course of 1991.

4. The Panel will develop specific criteria for the selection of candidates and standard forms for applications.

5. In the case of the training programme submitted by France, the commencement date specified in its programme will be maintained, provided that the applications of the candidates are presented in due form to allow for the proper processing of the applications.

6. A note verbale will be sent by the Secretary-General covering all programmes that have been approved immediately after the meeting of the Training Panel to be held during the tenth session of the Preparatory Commission at Kingston.

7. Nominations submitted in response to the note verbale should be presented by 15 June 1992.